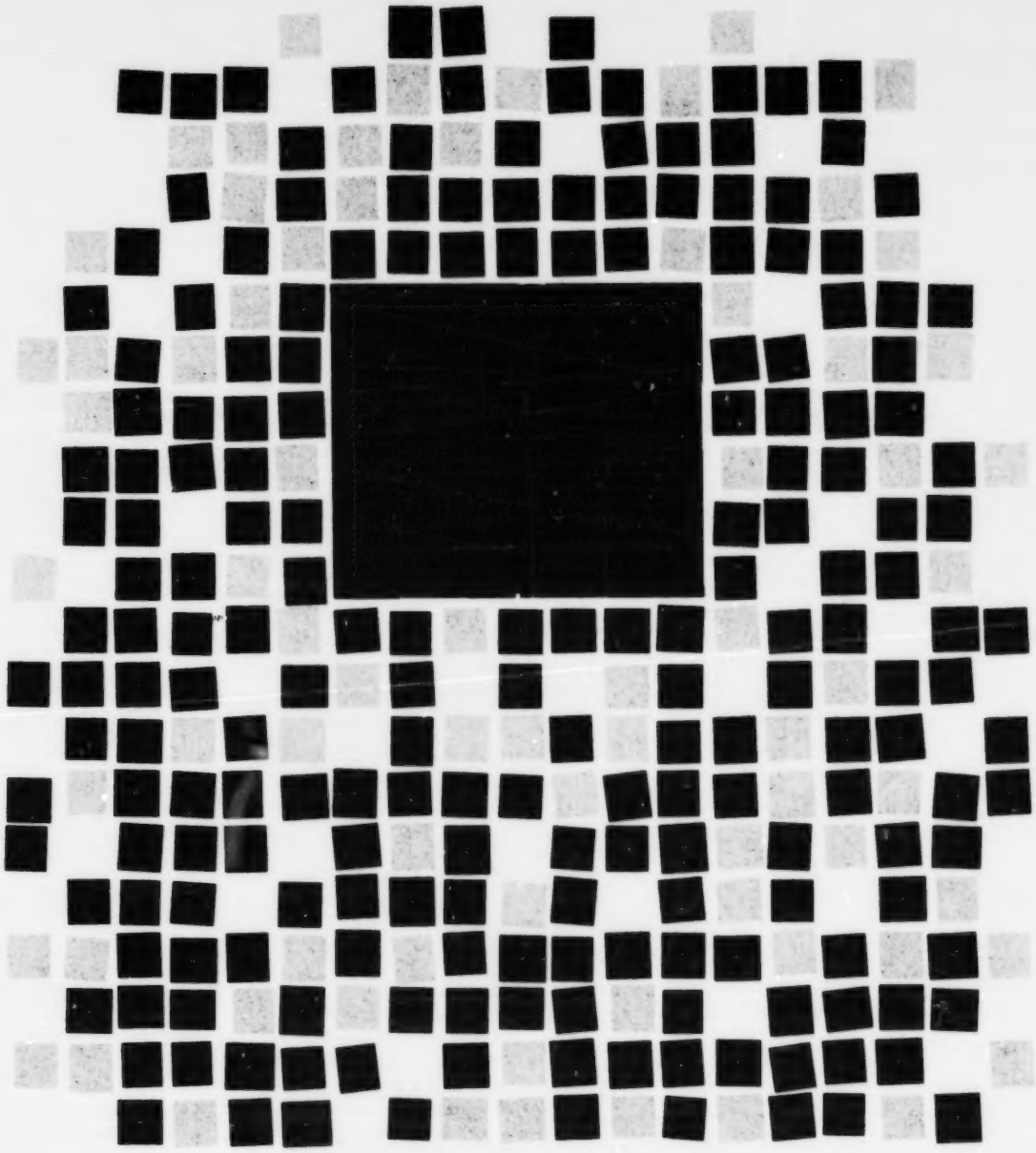


ANNUAL REPORT

1 APRIL 1985 - 31 MARCH 1986

Alberta

HUMAN RIGHTS COMMISSION

88-01258/

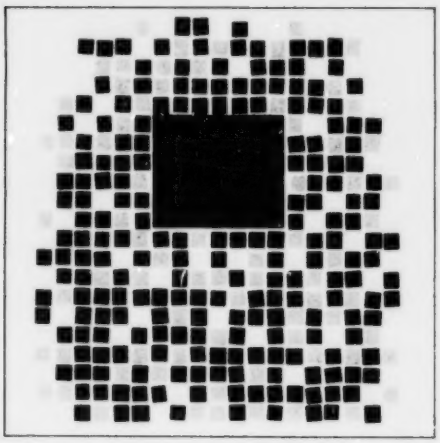
The Alberta Human Rights Commission's logo symbolizes several important concepts associated with human rights.

The figure represents a person; it makes no distinction on gender or race, representing equality in humanity.

The figure's outstretched arms represent an open willingness to accept all people, acknowledging the inherent dignity of all men and women.

The figure holds a staff, which represents the assistance and support given through human rights legislation.

The letter "h" represents a wheelchair; the wheelchair is a symbol associated internationally with the physically disabled.



ANNUAL REPORT

1 APRIL 1985 - 31 MARCH 1986

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ISSN 0380 4518

Alberta
LABOUR

Office of the Minister

420 Legislature Building, Edmonton, Alberta, Canada T5K 2B6 403 427-3664

September, 1986

The Honourable Dr. D. Carter
Speaker
Legislative Assembly of Alberta

Sir:

I have the honour to submit the Annual Report of the Alberta Human Rights Commission for the fiscal year ended March 31, 1986, in accordance with section 18(2) of the Individual's Rights Protection Act.

Respectfully submitted,

Ian C. Reid
Minister of Labour

Alberta
HUMAN RIGHTS COMMISSION

Room 902, 10808 - 99th Avenue, Edmonton, Alberta, Canada T5K 0G2 403/427-3116

September, 1986

The Honourable Dr. Ian Reid
Minister of Labour
420 Legislature Building
Edmonton, Alberta

Dear Dr. Reid:

I am pleased to submit to you, the Minister responsible for administering the Individual's Rights Protection Act, the Annual Report of the Alberta Human Rights Commission for fiscal year 1985-86 for tabling before the Legislative Assembly.

Yours truly,

Stan Scudder

Stanley Scudder
Chairman

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"WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all persons is the foundation of freedom, justice and peace in the world; and

WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, sex, physical disability, age, ancestry or place of origin; and

WHEREAS it is fitting that this principle be affirmed by the Legislature of Alberta in an enactment whereby those rights of the individual may be protected... ".

FROM THE PREAMBLE TO THE INDIVIDUAL'S RIGHTS PROTECTION ACT

CHAIRMAN'S REPORT

There were a number of significant developments and achievements for Alberta in the field of human rights in 1985-86.

Among them were amendments to the Individual's Rights Protection Act (IRPA), two major decisions by the Supreme Court of Canada in which the Commission was an intervener, the hosting of the annual meeting of Canada's statutory human rights agencies, an increase in the number of education presentations made, and the continued streamlining of handling complaints of discrimination.

Important amendments were made to the Individual's Rights Protection Act in June 1985. One of them extended protection to pregnant women in the area of employment. The Commission had assumed this was an area of its jurisdiction, but the position had been overturned by a board of inquiry only to be followed by the change in legislation.

A new section to the IRPA enables the Commission to make recommendations in accordance with the concept of "reasonable accommodation", to help parties in resolving complaints of discrimination. This has helped the Commission resolve complaints quickly and satisfactorily. Sixty five percent of the complaints were resolved within 60 days.

In May 1985 the Commission hosted the annual meeting of the Canadian Association of Statutory Human Rights Agencies. Representatives of commissions from all provincial and federal and territorial jurisdictions came to Edmonton for the major two day event, to discuss the future of human rights in Canada. A number of topics, including systemic discrimination and education, were covered.

The number of complaints in 1985-86 dropped to 240 from 315 the previous fiscal year. There was a considerable drop in complaints based on colour, ancestry or place of origin, down to 44 from 113. Undoubtedly, greater awareness has been generated by the "Alberta Is For All Of Us" campaign and through the work done by the provincial government Committee on Tolerance and Understanding, which both point out the harmful effects of religious and racial intolerance.

The greatest number of complaints were in the area of employment; of the 174 complaints in this area, 91 were on the basis of sex: 52 of these involved sexual harassment. Complaints on the basis of age increased to 15.8 percent of the workload compared to 3.2 percent in 1984-85. This could be attributed to the June 1985 amendment to the IRPA, in which age was redefined as age 18 and over; it was 45 to 65 before. This amendment has brought an increase in the complaints on the matter of mandatory retirement.

There continued to be heavy demand for education presentations. More than 8,500 people attended 281 presentations, including workshops. Education officers continued to help employers develop policies on sexual harassment and other effective employment practices which adhere to the IRPA.

This annual report contains information on the boards of inquiry requested by the Commission. Information is also provided on the Bhinder versus Canadian National Railway Company case, heard before the Supreme Court of Canada; the Alberta Human Rights Commission acted as an intervener. The favourable ruling by the court on the matter of intent was important; it is very difficult to prove intent other than by looking at the effect of discrimination.

The Commission also acted as an intervener in the case of O'Malley versus Simpsons Sears Limited. The O'Malley decision echoed the Bhinder decision, stating that: "The intent to discriminate is not a governing factor in construing human rights legislation aimed at eliminating discrimination; rather it is a result of the effect of the alleged discriminatory action that is significant."

The effect of Bhinder would appear to eliminate the principle of reasonable accommodation where the human rights code recognizes a bona fide occupational requirement. Since the IRPA recognizes the bona fide occupational requirement it may require amendment in order to preserve the principle in future cases.

Lastly, there were changes in commissioners and staffing. Two new education officers joined the Commission, putting the Commission in a better position to meet the heavy demand for workshop and other educational activities.

Commissioners Sheryl Wowk and Alice Haxton completed their terms, and Enrico Lazo, Barbara Tate and Edna Short were appointed commissioners in 1985-86.

Chairman Marlene Antonio retired at the end of December 1985 and I assumed chairmanship on January 1, 1986.

The programs and activities of the Commission promoted greater understanding of the basic philosophy behind the Individual's Rights Protection Act and the importance of that philosophy to the province.

Stan Scudder

Stan Scudder
Chairman

INTRODUCTION

INDIVIDUAL'S RIGHTS PROTECTION ACT

The *Individual's Rights Protection Act* (IRPA) bestows on the Alberta Human Rights Commission a two-fold mandate: to promote and safeguard the spirit and principles embodied in the Act, and to protect Albertans against acts of discrimination. The Commission fulfills its mandate through investigation of complaints and education.

The IRPA protects Albertans from acts of discrimination in four main areas: employment, tenancy, public services and accommodation, and signs and notices. It is a contravention of the Act to discriminate against anyone in any of the four areas because of race, colour, sex, religious beliefs, physical disability, ancestry or place of origin. Age, pregnancy (when employed) and marital status are protected categories in employment only. Age is also a protected ground in the area of signs and notices.

The aim of the Act is to give everyone in Alberta an equal opportunity, free of discrimination, to earn a living, find a place to live and enjoy public services and accommodations. The IRPA is not a criminal code. The Human Rights Commission does not look for "guilt" or "innocence", nor does it have the power to order an employer, landlord or provider of services to pay a fine or agree to a settlement. However, the Commission does have the responsibility of attempting to negotiate settlements which lead to the satisfactory resolution of complaints. Where discrimination has occurred against an individual, the Commission has the responsibility of attempting to negotiate a remedy that will, to the greatest extent possible, restore that individual to the same circumstances that existed before the act of discrimination took place.

When the Commission receives a complaint alleging an act of discrimination, a human rights officer first determines whether the Commission has jurisdiction and whether there are "reasonable grounds" to believe discrimination has occurred.

When it appears that the IRPA has been contravened, the complainant is required to sign a complaint form before the Commission can investigate. The respondent is notified of the complaint before any further action is taken. Individuals wishing to protect their rights must accept the responsibility of signing a complaint form within six months of the alleged act of discrimination. Once the form is signed, the respondent or person who is alleged to have discriminated, is notified of the complaint.

Commission investigations are objective and impartial. Respondents and complainants are both given equal opportunity to present their respective positions.

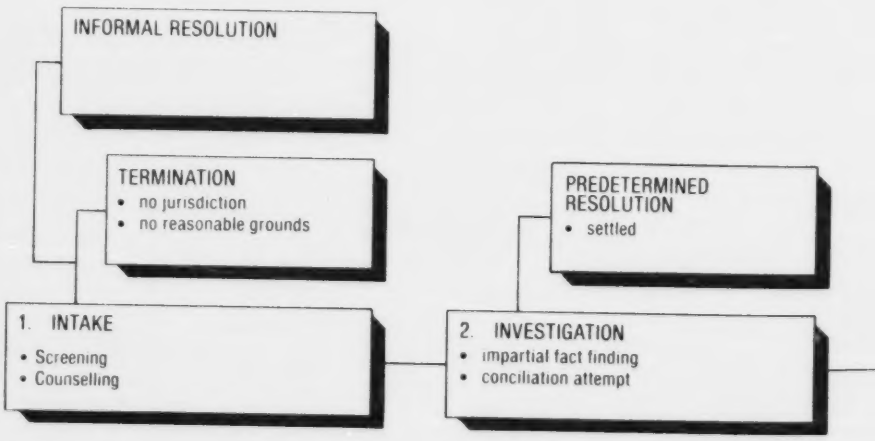
The Commission will dismiss a complaint at any stage of the proceedings if, in its opinion, the complaint is without merit. If it is determined that the IRPA has been contravened, Commission officers attempt to negotiate a settlement. Because each case is unique, negotiated settlements can vary from letters of apology to cash settlements for lost wages. Commission officers do not have the power to order a settlement.

Through the Commission's educational activities, schools, businesses, unions, special interest groups and the general public learn about the provisions of the IRPA and are encouraged to apply the principles of the Act in their relationship with fellow Albertans.

Through these educational activities, more and more Albertans have come to realize that the IRPA is not designed to control prejudice — what people think, but to prohibit discrimination — what people do.

HOW COMPLAINTS ARE HANDLED

Most complaints to the Alberta Human Rights Commission are resolved in four or fewer steps. Complaints may be resolved, or dismissed, at any step in this process. Unresolved complaints may go to a board of inquiry.



ALBERTA HUMAN RIGHTS COMMISSION

The Alberta Human Rights Commission is made up of seven members who are appointed by the Lieutenant Governor in Council to represent the public at large. A chairman is appointed from among the commissioners, who hold their positions part-time.

The Commission is appointed by the Lieutenant Governor in Council and is an autonomous and independent body. The Minister of Labour is responsible for the administration of the *Individual's Rights Protection Act.*

The Commission meets every month with meetings alternating between Calgary and Edmonton. Meetings are sometimes held in other parts of the province.

As part of its education mandate, the Commission opens a portion of some meetings to the public and the media and releases information on settled cases. The open portion has also enabled groups and individuals who have appeared before the Commission to present and discuss matters of concern or mutual interest. Confidential sessions are used to formulate policies, review complaints and discuss issues affecting the Act.

COMMISSIONERS

(see pages 14-17 for biographies)

	TERM EXPIRES
Stanley Scudder, Chairman	31 March 1987
Barbara Tate	31 January 1990
Enrico Lazo	31 January 1990
Edna Short	31 December 1989
William Leslie	31 October 1988
Suzanne Mah	31 October 1988
Gerri Many Fingers	30 June 1986
Alice Haxton	31 January 1986
Marlene Antonio	31 December 1985
Sheryl Wowk	1 November 1985

ADMINISTRATION

The Commission's head office in Edmonton houses the chairman, executive director and support staff, and is separate from its two regional offices in Edmonton and Calgary.

The majority of contacts between the public and the Commission staff, who are full-time public service employees, occur through the Commission's regional offices. The northern regional office in Edmonton is responsible for the area north of Red Deer, while the southern regional office in Calgary is responsible for Commission activities in Red Deer and the southern part of the province.

Commission staff includes three administrative staff, two supervisors, four education officers, eight investigators and seven support staff. The Commission's budget was $1.2 million in 1985-86.

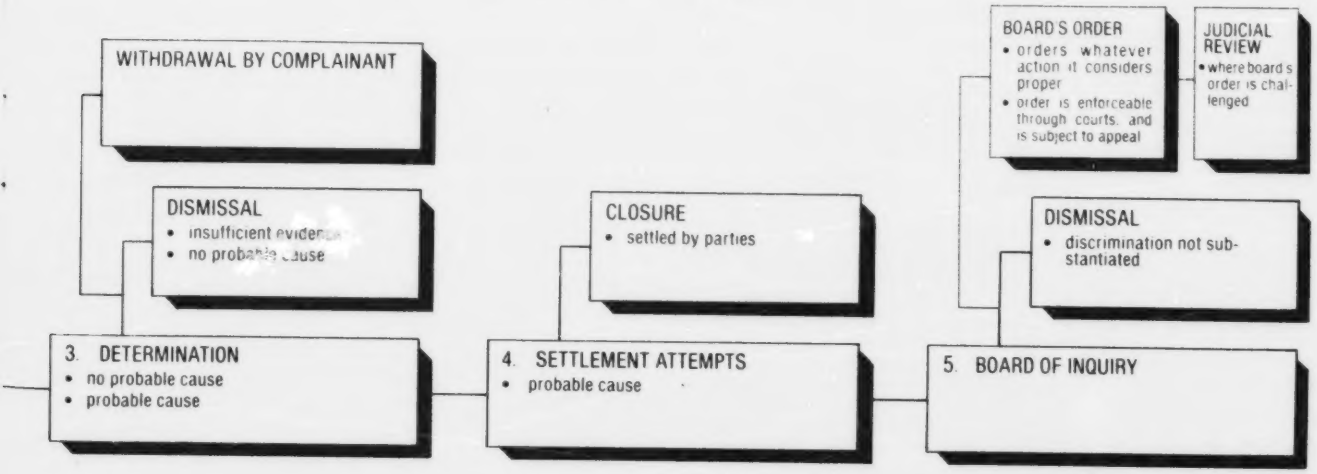
Commission staff handled 12,000 telephone enquiries; in most cases, staff were able to refer callers to the appropriate agency or department. About 2,900 enquiries fell within its jurisdiction resulting in 240 complaints.

The Commission continued to streamline investigation of complaints. The average time to settle a complaint was 97 days compared to 105 days in 1984-85 and 495 days six years ago.

INVESTIGATIVE RESPONSIBILITY

The Commission investigates the circumstances of a complaint under Section 20 of the IRPA. It endeavours to effect a settlement when the investigation substantiates the complaint. Negotiated settlements may include anything from an apology to monetary compensation for actual losses suffered as a result of the discrimination. Neither the commissioners nor Commission staff can order either of the parties involved to accept a settlement. However, the Commission aims to resolve complaints to the satisfaction of both parties.

The Commission can dismiss a complaint at any stage of the investigation if, in its opinion, the complaint is without merit.



AMENDMENTS AND RECOMMENDATIONS

AMENDMENTS TO THE INDIVIDUAL'S RIGHTS PROTECTION ACT

On June 5, 1985, Bill 33, the *INDIVIDUAL'S RIGHTS PROTECTION AMENDMENT ACT, 1985,* received Royal Assent and came into force.

Section 7(1.1) of the Individual's Rights Protection Act now offers protection to pregnant women against dismissal from their job and against terms and conditions of employment which would discriminate against them "by reason only of pregnancy."

The introduction of the concept "reasonable and justifiable" (Section 11.1) means that discrimination will not be considered to have occurred where it can be shown that circumstances warrant the action in question. This concept will allow for the implementation of special programs designed to remove barriers to equal opportunity in Alberta. The amendment makes such programs defensible if the special circumstances which pertain in specific situations justify it.

Section 20(5) enables the Alberta Human Rights Commission to make non-binding recommendations, in accordance with the concept of reasonable accommodation, to assist parties in the resolution of complaints of discrimination. Therefore the Commission can offer counsel to help parties resolve their differences without going to a board of inquiry. This option facilitates quick and satisfactory resolution of complaints by the parties.

The term "physical characteristics" was replaced with "physical disability". The term is new but the definition remains the same.

All references to "bona fide occupational qualification" have now been changed to "bona fide occupational requirement." The new term places the emphasis on the special requirements of a particular job rather than on the special qualifications of a particular employee.

Retroactive compensation for lost wages will be limited to a maximum of two years (Section 31.1).

Simultaneous proclamation of Bill 42, The Charter Omnibus Bill, changed the definition of age from "45 to 65 years" to protect individuals 18 years and older. (In the Bill, a number of provincial acts were amended to conform with the Canadian Charter of Rights and Freedoms. This was required by the Charter to occur by June 1985.)

AUTOMOBILE INSURANCE

The automobile insurance industry has been exempted from using the ground of sex as a premium rating factor until June 1987. The Alberta Human Rights Commission is in the process of reviewing the situation and will be making a number of recommendations to the Minister of Labour in fiscal year 1986-87.

SPECIAL EVENTS

The Alberta Human Rights Commission hosted the 1985 Annual Conference of the Canadian Association of Statutory Human Rights Agencies (CASHRA), which took place in Edmonton's Convention Inn from May 26 to May 28. From across the country, human rights experts gathered to discuss a wide range of current topics and to share their views of the past and future of human rights in Canada.

A major subject during the conference was systemic discrimination, which results from the existence of barriers within a social or economic structure which tend to screen out, or reduce the opportunities of, members of certain groups, such as women, visible minorities, etc. Systemic discrimination is seen particularly in systems of hiring and employment, but may also affect services customarily available to the public, such as education.

Various aspects of legality received concentrated attention, as delegates heard an update on recent human rights litigation and a discussion of the legal rights of parties involved in human rights action. In addition, one session was devoted to the related matter of current human rights legislation.

Education was a third important subject, in a two-part session entitled "Education - the Key to Effective Change" and a continuing display of available education materials.

Discussions of discrimination in automobile insurance rating, administrative procedures, race relations and equal pay rounded out the two day conference.

EDUCATION AND PROMOTION

EDUCATIONAL ACTIVITIES

One of the mandates of the Alberta Human Rights Commission as prescribed in the *Individual's Rights Protection Act* is "to research, develop and conduct educational programs designed to eliminate discriminatory practices related to race, religious beliefs, colour, sex, physical disability, age, ancestry or place of origin...".

The existing educational program is aimed at three target audiences: schools, special interest groups and employers. The Commission's education officers conduct workshops and seminars, undertake consultation, make public presentations and develop resource and curriculum material.

The pace of educational activity accelerated during the past year as Alberta Human Rights Commission education staff increased to four from two education officers. They addressed 281 groups and hosted workshops for 8,676 people. This compares with 220 presentations and 6, 566 Albertans in 1984-85.

There was a heavy demand by both the northern and southern regional offices to conduct workshops on sexual harassment. Educational institutions and special interest groups made specific requests to have the subject included in Commission presentations, and in-house workshops on sexual harassment continued to draw a broad cross-section of Albertans to Commission offices. Sexual harassment topics appeared to be of great interest to post-secondary classes and to groups involved in job-entry and women's training programs.

Education officers made presentations and gave consultations at universities, institutes of technology, community colleges, high schools and vocation centres. They visited groups such as immigrant women's organizations, women and youth job-entry groups, multicultural agencies, agencies for the physically disabled, trade and professional organizations, police departments, unions, and employers and employees from firms throughout the province.

After the *Individual's Rights Protection Act* was amended in June 1985, publications were updated to reflect the changes. Education staff was involved in the development of data sheets dealing with the various grounds protected by the Act.

Commission staff co-operated with the Canadian Human Rights Commission to present a university extension course designed to explain federal and provincial human rights legislation and help employers develop effective employment practices which adhere to the legislation.

In an effort to update the legal profession on the role of the Commission, counsel for the Alberta Human Rights Commission made formal presentations to such groups as the Alberta Section of the Canadian Bar Association and the Faculty of Law of the University of Alberta.

As well, the Commission chairman and commissioners gave numerous talks to groups throughout the province. Among them, during a fall speaking tour to explain the amendments to the *Individual's Rights Protection Act*, commissioners and management staff visited Grande Prairie, Peace River, Medicine Hat, Lethbridge, Hinton, Jasper, Red Deer, Camrose, Fort McMurray and Lac La Biche. Private and confidential meetings were held for individuals who wanted to discuss personal situations.

Throughout the year the chairman and commissioners addressed such groups as the Chinese Canadian National Council, Edmonton Women's Network, Canadian Organization of Small Business, Edmonton Personnel Association, Interagency Accommodation Committee, Lethbridge Insurance Brokers, Alberta Association of Medical Radiology Technicians Club, Energy Resources Conservation Board and Canadian Human Rights Foundation. They also made presentations to numerous educational groups, service clubs, chambers of commerce and special interest groups.

STAFF/COMMISSION IN-SERVICE TRAINING

Throughout the year guest speakers provided Commission members and staff with new insights into a number of human-rights related issues and legislation.

Dr. Barbara Romanowski, director of the Sexually Transmitted Disease Clinic in Edmonon, addressed the Commission on the subject of "AIDS and Human Rights", detailing the history and causes of the disease while correcting popular misinformation circulated about AIDS (acquired immune deficiency syndrome).

Professor Neil McDonald, lecturer in history and cross cultural studies at the University of Manitoba, conducted a workshop for the Commission and staff on Canada's multicultural heritage. With a population comprised of 70 ethnic groups, Canada is the only country in the world that offers the promise of multiculturalism. Professor McDonald explained the need, therefore, to understand what ethnicity is about and its importance to our lives as Canadians.

Shirley Robertson, director, labour market adjustment and development, described the employment equity features of the Canadian Jobs Strategy program introduced in June 1985 by the Honourable Flora MacDonald, federal minister of employment and immigration.

The strategy contains employment equity features targeted at women, natives, the physically disabled and visible minorities and is designed to ensure equal opportunity and fair access.

Karen Fingas, manager of settlement services in Alberta Manpower, explained to the Commission the role of Manpower Settlement Services and its relationship with the various volunteer agencies which work with immigrants and refugees coming into the province. Manpower Settlement Services only provides funding to the agencies involved. Alberta was expected to receive 12,000 immigrants in 1986. Of these, it is estimated that roughly 40 percent will live in Edmonton, 40 percent in Calgary, and the remaining 20 percent will settle in other parts of the province.

PUBLIC AFFAIRS

During 1985-86 the Commission's public affairs activities included:

- publishing the quarterly Alberta Human Rights Journal
- developing a new major publication serving as an introduction to the Alberta Human Rights Commission and the province's anti-discrimination legislation, the Individual's Rights Protection Act (IRPA)
- designing a new display using the theme "Alberta Is For All Of Us" to complement education workshops
- creating public awareness and understanding of the many significant amendments in the IRPA which became law in June 1985
- co-ordinating a series of public meetings providing a forum for special interest groups and individuals to address the Commission on human rights topics and areas of concern
- developing guidelines to prohibit stereotyping and unequal representation in Government of Alberta advertising programs
- responding to more than 300 media inquiries on human rights issues, the main areas of interest having been mandatory retirement, equal pay for work of equal value, affirmative action programs, sexual harassment and the rights of the disabled
- producing for free circulation a brochure containing biographies and photographs of the Chairman and Commissioners in preparation of their developing a higher public profile
- co-ordinating an annual Human Rights Day media awards and profiling human rights advances through the annual International Human Rights Day celebrations of December 10th.

INTERNATIONAL HUMAN RIGHTS DAY 10 DECEMBER 1985

In commemoration of the 37th anniversary of International Human Rights Day, the Alberta Human Rights Commission honoured Alberta broadcasters Fil Fraser and Bob Makichuk. The two received plaques recognizing their contributions in bringing human rights issues to the attention of Albertans.

EXAMPLES OF SETTLED CASES

Human rights officers attempt to resolve complaints which fall under the jurisdiction of the Individual's Rights Protection Act. In most cases, complaints are satisfactorily settled between the complainant and respondent.

Some examples of these cases settled in 1985-86 are given here.

AREA OF EMPLOYMENT

Grounds: Age

A 62 year-old man phoned in response to an advertisement for a shoe repair person. The applicant told the owner he had 45 years of experience. The owner said that he was too old and that he was looking for someone who was 50 years old with at least five years of experience. Following investigation by the Commission, the respondent wrote a letter of apology to the complainant and promised to consider him for the next available vacancy. This case was resolved to the complainant's satisfaction.

Grounds: Age

A 22-year-old male security guard was fired from his part time job at a teen club because he was "too old". The complainant had worked for two weekends before he was told that security people must be between 18 and 21 years old. This information was included in a letter of termination. The matter was settled when the respondent signed a memorandum of agreement, promising to adhere to the provisions of the IRPA, and offered the complainant a job when the next opening occurred. The complainant was satisfied with this settlement.

Grounds: Race

A South Asian man employed in a hospital complained to the Commission that he was being subjected to racially derogatory remarks from another employee. He claimed that the employee told him he was "causing the place to smell" and that he was "useless". The complainant said that he had reported his concerns in writing to his supervisors who promised to inquire further. However, he wanted to know from the commission if he needed to take any other actions to ensure that the harassment would stop.

The complainant was advised to let the hospital administrators know he had contacted the Commission and suggest to them that it could help to resolve the matter. The administrators called the Commission and discussed possible solutions. The complainant afterwards said that his concerns had been appropriately remedied.

Grounds: Physical Disability

A woman with a visual impairment, and sight in only her right eye, alleged that her supervisor was harassing her unnecessarily because of her impairment and unfairly evaluating her work. She was required to attend a medical pre-screening, then a medical review board and finally, take a standard typing test. Despite positive results in all three requirements she claimed that she continued to be subjected to unusual monitoring and treatment.

The respondent, upon receiving notice of the complaint, immediately contacted the Commission claiming that a job relocation for the complainant had already been in process and that this was in the interest of the complainant. Within a few days the complainant was relocated and considered her complaint settled.

Grounds: Race, Ancestry, Place of Origin and Age

A 60-year old man of East Indian ancestry and originally from South India complained that he was harassed and fired from his job without just cause by his manager, because of his race, ancestry, place of origin and age.

He had been employed by the company for some months without any major problems. He completed his probationary period and received an increase in his wages. He claimed that after he was transferred within the company, his new manager continually found fault with his work and reprimanded him despite his efforts to perform all his tasks. He claimed that occasionally, when he was being reprimanded, the manager asked where he was from and his age. The manager said he had transferred a man of East Indian background, who once worked under his supervision. The manager also suggested that he was too old to work efficiently. The complainant was fired after working about three weeks with the new manager.

After a human rights officer met with the employer's representatives, it was decided that the man's firing was due to communication differences between the man and the manager. The complainant agreed. The complainant accepted $190 in settlement and the employer agreed to comply with the provisions of the IRPA. The employer also accepted the human rights officer's recommendation to use the Commission's education services for future employee training.

Grounds: Marital Status, Religious Beliefs and Physical Characteristics

A man informed the Commission that an employment application of a school board asked for information on marital status, religious beliefs, and physical characteristics. The board said it was willing to revise its employment application form. After two reviews of the form by the Commission the respondent revised it to conform with the IRPA.

AREA OF SERVICES

Grounds: Race and Ancestry

A Native woman applied for a loan to a credit institution, but was refused. She was told that, because she was a Native and living on a Reserve, her application had not been processed and no credit check had been carried out. The institution told the Commission that the decision to deny the loan had been made by the loans manager in violation of company policy, and the loans manager was no longer with the company. The woman accepted a written apology and assurance that any further application would be considered on its own merit using established criteria.

*Grounds: Physical Characteristics**

A female amputee, with a prosthetic right arm, complained to the Commission that she was discriminated against at a summer carnival. She was refused one ride because the ride operator thought it unsafe for her, even though she had herself bought the tickets and argued that she had ridden rides in the past without trouble. The operators of two other rides permitted her on them after she argued adamantly with them.

She tried, the same day, to complain to carnival management, but no one was made available to her. When the Commission called the carnival, the acting manager apologized immediately; by the time he heard about the incidents, the woman had been denied rides. The carnival manager offered to settle the matter by:

- writing an apology to the woman and giving her a booklet of courtesy ride passes
- posting a sign on the ticket booths asking that people with physical limitations which might affect their safety on a ride inform the office staff
- training carnival staff on properly making enquiries to people with physical disabilities
- agreeing to receive literature from the Commission on the human rights law in the province and staff training.

The woman accepted the settlement offer.

**As of June 5, 1985, "physical characteristics" was replaced with "physical disability". The term is new but the definition remains the same.*

BOARDS OF INQUIRY

When the Commission is unable to settle a complaint, it may direct the Minister of Labour to appoint a board of inquiry, a quasi-judicial body, to formally conduct an inquiry. A board of inquiry is separate and distinct from the Commission. At this level, the Commission's only duty is to take the complaint before the board.

A board of inquiry hears evidence from both the complainant and the respondent and issues a decision based upon the evidence heard as it pertains to the *Individual's Rights Protection Act*.

Decisions of the board can be appealed by either party only on the basis of law or a combination of fact and law.

In addition to the powers under Section 31 of the IRPA, the board, as a quasi-judicial body, has the powers established under the *Public Inquiries Act*. Proceedings before a board are civil, not criminal, in nature.

Following are the boards of inquiry in 1985-86.

1. **Suneet Singh Tuli against the St. Albert Protestant Separate School District No. 6**
   Chairman: John Philip Warner

   Mr. Tuli, a Grade 12 student of the Sikh faith who attended Paul Kane High School, inquired about wearing the Kirpan (sword symbolic of the Sikh religion) in his school. He explained to the school that, once baptized, he would be required to wear it for religious reasons. The school told him that regulations would not allow him to wear the Kirpan. He filed a complaint 17 April 1985 with the Alberta Human Rights Commission. On 19 April 1985 Justice A.H. Wachowich granted a temporary restraining order against the school, stopping it from expelling or suspending Mr. Tuli if he wore his Kirpan to school following his baptism. Mr. Tuli graduated from his high school in June 1985.

   A board of inquiry was scheduled for October 1986 to inquire into Mr. Tuli's complaint, which alleged discrimination under a section of the *Individual's Rights Protection Act* relating to religious beliefs.

2. **Rajinder Singh Gill and Surjit Brar against Checker Cab Ltd.**
   Chairman: Brian Malone

   Messrs. Gill and Brar registered complaints in March 1985 against Checker Cab Ltd. of Calgary, alleging discrimination in employment based on their religious beliefs. Both men are practising Sikhs and, as such, wear turbans and beards. On applying for employment with Checker Cab, Messrs. Gill and Brar said they were told by a spokesman for the company that the firm sought clean shaven drivers only and did not hire Sikhs who have beards and wear turbans. The company contended that its strict dress code was required to meet customer demand for high quality service.

   Although a board of inquiry was scheduled in this case, a confidential settlement was reached between the parties before the board of inquiry was convened.

3. **Jaspal Singh Kang, Kimaljit Singh Gill and Mijit Singh Pannu against Prestige Cabs Ltd.**
   Chairman: Brian E. Scott

   Messrs. Kang, Gill and Pannu filed complaints in March 1985 against Prestige Cabs Ltd. of Calgary, alleging discrimination in employment on the basis of religious beliefs. The three complained they had been denied the opportunity to apply for a job with Prestige Cabs, having been told by the company that it did not hire Sikhs who have beards and wear turbans.

   A question arose during the hearings as to whether or not cab drivers should be considered "employees" within the meaning of the *Individual's Rights Protection Act* and the matter was therefore referred, by way of a stated case, to the Court of Queen's Bench.

   At fiscal year-end, no decision had been reached in this case.

4. **Jim Christie against Central Alberta Dairy Pool**
   Chairman: Gary M. Johanson

   Mr. Christie claimed that he was discriminated against on the basis of his religious beliefs when he was fired for taking two days off for religious reasons. The employer maintained that there was no intentional discrimination and the company could not reasonably accommodate his request for time off because of production needs. A board of inquiry stated that the employer had a duty to accommodate Mr. Christie's religious requirements and ordered the employer to pay Mr. Christie $8,000 as partial compensation for income lost because of the discriminatory action. However, the Board of Inquiry refused to order his reinstatement because of the conflict between Mr. Christie's religious requirements and the requirement of his position in the company. The employer appealed the decision on the basis that there is no blanket duty to accommodate, especially where job requirements demand the employee's attendance. (Note: The Commission cross appealed the amount of compensation).

5. **Olive P. Dickason and Oleh Zujewskyj against the Governors of the University of Alberta Chairman: Kenneth J. Alyluia**

Professors Dickason and Zujewskyj filed complaints in which they claimed they were forced to retire from fulltime employment because of their age. The University maintained that retirement at age 65 would rejuvenate staff and cut costs. A board of inquiry, appointed in March 1986, is expected to hear the matter in the fall of 1986.

6. **Joan Pankhurst against Vince Hover Professional Corporation Chairwoman: Theresa C. Smith**

Ms. Joan Pankhurst filed a complaint in June 1982 in which she alleged that she was sexually harassed by her employer John Vincent Hover of Vince Hover Professional Corporation. The Alberta Human Rights Commission appointed several investigators into the complaint over two years because of resignations and transfers during that period. The Commission appointed a board of inquiry in May 1984 to hear the complaint when attempts to settle the matter failed. The Board did not convene because in October 1984 Mr. Hover successfully applied to the Court of Queen's Bench for an order in the nature of prohibition, with certiorari, to quash the appointment of Mrs. Smith and to prohibit the Commission from appointing a board.

Two reasons for Chief Justice Moore's decision were the delay in the investigation amounting to a form of harassment and other procedural errors committed by the Commission. The Commission was unsuccessful when it appealed Chief Justice Moore's decision in February 1986.

JUDICIAL DECISIONS

If an order from a board of inquiry is challenged or appealed, it can be reviewed in court. Two cases were heard in the Court of Queen's Bench of Alberta. In two other cases originating in Ontario, and heard in the Supreme Court of Canada, the Alberta Human Rights Commission acted as an intervener.

1. **In the Court of Queen's Bench of Alberta before The Honourable Mr. Justice M.B. O'Byrne in the matter of a complaint by Lorraine Ennis against the Alberta Conference of the Seventh-Day Adventists.**

Mrs. Ennis, a black female, said that she became aware in August 1979 of a lesser qualified white male hired for the position of principal in the school where she was employed. She signed a complaint in August 1979 in which she claimed that she was not considered for the position because of race, sex and colour. A board of inquiry convened to hear her complaint on 3 June 1985. The respondent successfully applied for an order of prohibition, prior to the hearing of the board, on the grounds that Mrs. Ennis's complaint was made outside the six month time limit stipulated in the Individual's Rights Protection Act.

2. **In the Court of Queen's Bench of Alberta with Madam Justice J.B. Veit in the matter of a complaint of denial of services or facilities customarily available to the public filed by Brian and Marie McClung on behalf of their son Kelly against the Minister of Education, the Department of Education and the Calgary Board of Education.**

Brian and Marie McClung and their son Kelly filed a complaint in February 1983 in which they claimed that Kelly, who had a severe learning disability, was discriminated against on the basis

of physical characteristics (the term physical characteristics has since been amended in the IRPA and is now called physical disability). They claimed that his learning disability had a physical origin. Because the relevant authorities failed to provide the necessary educational services, they had to send their son to the Calgary Academy, a school for students with severe learning disabilities. They also claimed that the relevant education authorities failed to provide adequate funds to cover the cost of full tuition. The Commission directed the appointment of a board of inquiry in May 1984. The respondents applied for an order of prohibition, to prohibit the Board of Inquiry from dealing with the complaint on the grounds of lack of jurisdiction, because Kelly's learning disability did not fall within the definition of physical characteristics and education grants were not a service customarily available to the public. Madam Justice J.B. Veit, while granting the order of prohibition on the basis that educational grants were not a service customarily available, found that Kelly's learning disorder was a physical disability and that schools were a service customarily available to the public.

The Commission decided to appeal Madam Justice J.B. Veit's findings on educational grants. The appeal is expected to be heard in late 1986.

3. In the matter of K.S. Bhinder and the Canadian Human Rights Commission and the Canadian National Railway Company and interveners from the Province of Manitoba and Saskatchewan. The other interveners were the Alberta Human Rights Commission and the Canadian Association for the Mentally Retarded. Judgement was rendered 17 December 1985.

Bhinder's Sikh religion required him to wear a turban and no other head covering. CN required him, as an electrician, to wear a hard hat. When he refused to comply and would not accept alternative employment, his employment ceased. A Canadian Human Rights Tribunal decided there had been discrimination and ordered Bhinder reinstated without loss of seniority and with back pay.

The Federal Court of Appeal set that decision aside on the basis that a work rule was not a discriminatory practice. At issue was whether the hard hat rule was a bona fide occupational requirement. The judgement was appealed. The Supreme Court dismissed the appeal with Justices Dickason and Lamer dissenting.

Justices Estey, McIntyre and Chouinard found the hard hat rule was a bona fide occupational requirement (B.F.O.R.) which met the Etobicoke test; i.e., honestly imposed in the interest of work performance, with reasonable dispatch, safety and economy. The test does not vary with the individual nor lose its character as a B.F.O.R. because it is discriminatory. There is no duty to accommodate because the Federal Human Rights Code had declared there is no discriminatory practice where there is a B.F.O.R.

Justices Beetz and Wilson stated that if a B.F.O.R. were to be assessed for each employee it would have no meaning and the employer would have to accommodate the individual to the point of undue hardship. The purpose of the statutory B.F.O.R. is to put the requirements of a job over those of the employee. It negates any duty to accommodate.

Chief Justice Dickason and Justice Lamer would have allowed the appeal and recognized the principle of reasonable accommodation as a protection for individuals against adverse effect discrimination.

4. In the matter of the Ontario Human Rights Commission and Theresa O'Malley (Vincent) and Simpsons-Sears Limited and interveners from the Canadian, Manitoba, Saskatchewan and Alberta human rights commissions. The other interveners were the Canadian Association for the Mentally Retarded, the Coalition of Provincial Organizations of the Handicapped and the Canadian Jewish Congress.

Appellant O'Malley alleged discrimination on the basis of creed against her employer, a retailer, because she was periodically required to work Friday evenings and Saturdays as a condition of her employment. The appellant's religion required strict observance of the Sabbath from sundown Friday to sundown Saturday. Given this conflict, Ms. O'Malley accepted part-time work. Both the Divisional Court and the Court of Appeal upheld a board of inquiry's decision to dismiss the complaint. At issue was whether or not a work requirement, imposed on all employees, discriminated against Ms. O'Malley because compliance required her to act contrary to her religious beliefs and did not similarly affect other members of the employed group.

The Court ruled unanimously as follows:

An employment rule, honestly made for sound economic and business reasons and equally applicable to all to whom it is intended to apply, may nevertheless be discriminatory if it affects a person or persons differently from others to whom it is intended to apply. **The intent to discriminate is not a governing factor in construing human rights legislation aimed at eliminating discrimination.** Rather, it is the result or effect of the alleged discriminatory action that is significant. The aim of the Ontario Human Rights Code is to remove discrimination — its main approach is not to punish the discriminator but to provide relief to the victim of discrimination.

In a case of adverse effect discrimination, the employer has a duty to take reasonable steps to accommodate the individual short of undue hardship in the operation of the employer's business. There is no question of justification because the rule, if rationally connected to the employment, needs none. If such reasonable steps do not fully reach the desired end, the complainant, in the absence of some accommodating steps on his own part, must sacrifice either his religious principles or his employment.

The complainant first must establish a *prima facie* case of discrimination. The onus then shifts to the employer to show that he has taken such reasonable steps to accommodate the employee as are open to him without undue hardship. Here, the employer did not discharge the onus of showing that it had taken reasonable steps to accommodate the complainant.

OMBUDSMAN

During fiscal year 1985-86 the Alberta Ombudsman received three complaints against the Alberta Human Rights Commission contending that the Commission had not properly investigated complaints of discrimination. In one case the Ombudsman found that the Commission's investigation had been thorough and fair; in the second, the Ombudsman, although not upholding the complaint, made some recommendations with respect to the Commission's investigative procedures. The third complaint remains under investigation.

COMMISSION MEMBERS

Chairman Stanley Scudder
1 April 1981 to 31 March 1985
Reappointed 1 April 1985 to
31 March 1987
Appointed Chairman 1 January 1986

Stanley Scudder, born in Winnipeg, Manitoba, is president of an Edmonton insurance agency and has been associated with the insurance industry for the past 39 years. He is past chairman of the Church and Society Committee, a subcommittee of the Edmonton Diocese of the Anglican Church. The committee deals with such topics as justice, native concerns and the problems of the needy and oppressed. Mr. Scudder was the founding president of the Westmount Christian Council, an ecumenical group in Edmonton.

Barbara Tate
1 February 1986 to 31 January 1990

Barbara Tate was born and raised in New Norway, Alberta. She is Manager, Human Resources with Nova, An Alberta Corporation, Calgary, and has background in the property development industry and in the municipal affairs and human resources fields. She is a member of the Calgary Personnel Association and serves on the employer-employee relations committee of the Calgary Chamber of Commerce.

Enrico (Eric) Lazo
1 February 1986 to 31 January 1990

Enrico Lazo, born and raised in Manila, Philippines, migrated to Canada in 1977. A computer system analyst, banker and farmer, he has been a resident of Alberta since 1980. He was head of the computer department of a commercial geophysical data management records centre in Calgary. Mr. Lazo was involved with the Western Canada Games in 1983 and the Alberta Provincial Games for the Physically Disabled in 1985. He is active in the Filipino-Canadian community affairs in Southern Alberta and Chairman, Board of Trustees, NEPA (National Endeavours of Filipino Associations), a Filipino benevolent society.

Edna Short
1 January 1986 to 31 December 1989

Edna Short, born in Saskatchewan, has lived in Red Deer since 1962 where she is employed part-time as campaign director of the Red Deer and District United Way. She is a director of both the Chamber of Commerce and Agritrade, a joint venture of the Chamber of Commerce and the Western Exposition of Red Deer. Mrs. Short has been associated for more than 27 years with the Girl Guides of Canada at the local and provincial level and is presently deputy division commissioner in Red Deer. She is a past director of both the YMCA (Young Men's Christian Association) and the United Way and is parish administrator for St. Leonard on the Hill Anglican Church.

William Leslie
1 November 1984 to 31 October 1988

William Leslie is a Grande Prairie businessman with many years of management experience. He is currently employed at Trumpeter Travel in Grande Prairie as an outside salesman. Actively involved in school board affairs, Mr. Leslie has served for 21 years as a Grande Prairie school trustee. In addition to being a member of the Alberta School Trustees Association, he has participated in two educational finance task forces.

Suzanne Mah
1 November 1984 to 31 October 1988

Suzanne Mah is a partner in the Edmonton law firm of Ferguson, Switzer and Mah. Her area of practice includes corporate and small business law, commercial law and real estate. Ms. Mah also teaches legal relations courses in the Faculty of Business at the University of Alberta. She is a working group member with McKay House Multicultural Centre/Edmonton immigrant Services Association, a member of the board of directors of the Alberta Cultural Heritage Foundation and a member of the Mah Society and the Chinese Benevolent Society.

Gerri Many Fingers
7 July 1982 to 30 June 1986

A resident of Cardston, Gerri Many Fingers is a clothes designer and a commercial development co-ordinator for the Blood Tribe Economic Development department. She has been involved in a number of community projects, including volunteer work with the Southern Alberta Native Handicapped Society. Before joining the economic development group 14 years ago she worked for a bank, an insurance company, a radio station and the federal department of Indian and Northern Affairs.

Alice Haxton
10 January 1982 to 31 January 1986 (term completed)

Alice Haxton is one of the pioneers of the Fort McMurray area. She was born and raised near Winnipeg, Manitoba, and lived in northern British Columbia before moving to Fort McMurray. She operated a family-owned business until 1979. Mrs. Haxton is active in her own business interests as well as in the business community. She was formerly president of the Fort McMurray Chamber of Commerce, president of the Fort McMurray Burns Club, and honorary chairman of the United Way. She is on the board of directors of the Fort McMurray Family YMCA (Young Men's Christian Association) and is a member of the steering committee of the Downtown Business Association.

Marlene Antonio
19 December 1979 to 31 December 1985
Appointed Chairman 1 December 1981
Reappointed Chairman 23 November 1983
Retired 31 December 1985

A resident of Calgary, Marlene Antonio has extensive experience as an educator. In the Division of Continuing Education for the Calgary Board of Education, she has taught basic skills to the disabled and the disadvantaged. She has taught in the Stettler, Medicine Hat and Drayton Valley school systems, at Mount Royal College in Calgary and in the Faculty of Education, University of Calgary. Mrs. Antonio served as a member of the Minister of Education's Committee on Tolerance and Understanding. In recognition of her efforts, she was awarded the Good Servant Medal by the Canadian Council of Christians and Jews. Mrs. Antonio was president of the Canadian Association of Statutory Human Rights Agencies for 1984-85.

Sheryl Wowk
1 November 1981 - 1 November 1985 (term completed)

Sheryl Wowk was born and raised in Edmonton and has been involved in community affairs. Ms. Wowk serves on the boards of directors of the United Way of Edmonton and On-Site Placement Services. She takes an active part in union activities and served for three terms on the executive council of the Alberta Federation of Labour (A.F.L.). Ms. Wowk, a graduate of the Labour College of Canada, served as chairperson for the Duke of Edinburgh Commonwealth Conference Study. She was chairperson of A.F.L.'s Human Rights Committee. She has worked for Air Canada for the past 19 years.

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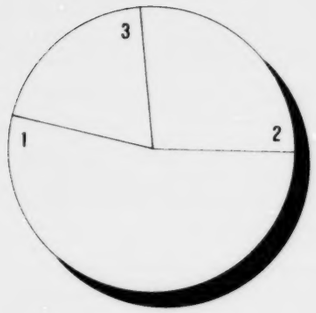
FORMAL COMPLAINTS FOR TOTAL PROVINCE 1984/85 - 1985/86

		DISCRIMINATORY SIGNS		PUBLIC ACCOMMODATION SERVICES		TENANCY		EQUAL PAY		EMPLOYMENT		EMPLOYMENT ADVERTISEMENTS APPLICATIONS		OCCUPATIONAL ASSOCIATIONS & TRADE UNION MEMBERSHIPS		RETALIATION		TOTAL		PERCENTAGE	
		84/85	85/86	84/85	85/86	84/85	85/86	84/85	85/86	84/85	85/86	84/85	85/86	84/85	85/86	84/85	85/86	84/85	85/86	84/85	85/86
RACE/ COLOUR	BLACK			23	9	4	1			24	6		1					51	17		
	NATIVE			10	7	5	4			7	1							22	12		
	S. ASIAN			4	2	1				11	5							16	7		
	ORIENTAL			3	1	1	1			13	2							17	4		
	WHITE			1						1	1							2	1		
	OTHERS			1		1				4	3	1						7	3	36.5	18.3
SEX	MALE			6						15	15	2	2					23	17		
	FEMALE	2		6	4	4	1	1	1	82	76		5					93	89	36.9	44.2
OTHER	RELIGIOUS BELIEFS			3	3					11	4		1					14	8	4.4	3.3
	AGE									10	29		4					10	33	3.2	13.8
	ANCESTRY			4	1	2				8	6							14	7		
	PLACE OF ORIGIN			3						5	2	1						9	2	7.3	3.8
	MARITAL STATUS									5	2							5	2	1.6	0.8
	PHYSICAL DISABILITY			12	12	2	1			15	22	1						30	35	9.5	14.6
	RETALIATION															2	3	2	3	.6	1.2
TOTAL		2		76	39	20	8	1	1	211	174	5	13			2	3	315	240		
PERCENTAGE		.8		24.1	16.3	6.4	3.3	.3	.4	67	72.6	1.6	5.4			.6	1.3			100	100

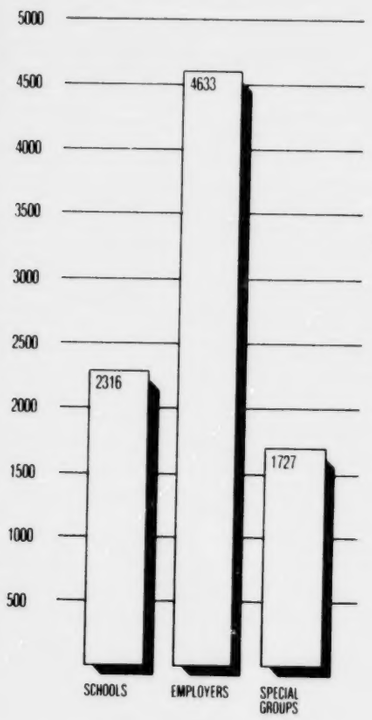
EDUCATIONAL ACTIVITY



WORKSHOPS

N = 281

1. EMPLOYERS 53.4% (150)
2. SCHOOLS 26.7% (75)
3. SPECIAL GROUPS 19.9% (56)

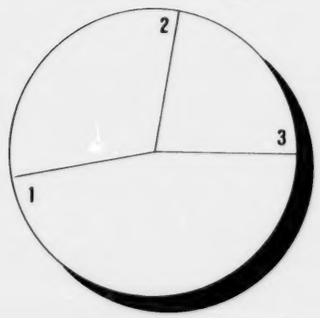


WORKSHOP PARTICIPANTS

T = 8676

T = 6566
1984-85

MEDIA CONTACTS



MEDIA CONTACTS

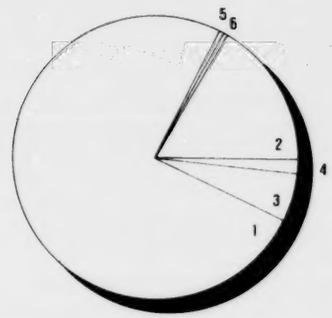
N = 329

1. PRINT 47.0%
2. RADIO 30.0%
3. T.V. 23.0%

COMPLAINTS BY PROHIBITED AREAS OF DISCRIMINATION

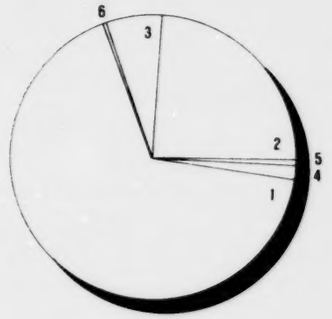
1985 - 1986

1. EMPLOYMENT 72.6%
2. SERVICES & ACCOMMODATION 16.3%
3. EMPLOYMENT ADVERTISEMENTS, APPLICATIONS 5.4%
4. RETALIATION 1.3%
5. EQUAL PAY 0.4%
6. TENANCY 0.3%



1984 - 1985

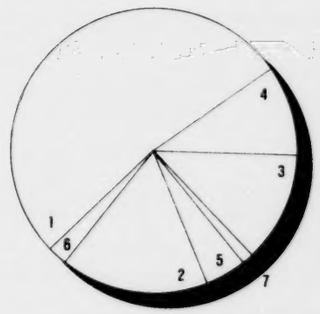
1. EMPLOYMENT 67%
2. SERVICES & ACCOMMODATION 24.1%
3. TENANCY 6.4%
4. EMPLOYMENT ADVERTISEMENTS, APPLICATIONS 1.6%
5. RETALIATION 0.6%
6. EQUAL PAY 0.3%



COMPLAINTS BY PROHIBITED GROUNDS OF DISCRIMINATION IN EMPLOYMENT

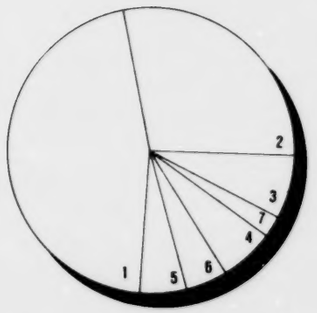
1985 - 1986

1. SEX 52.3%
2. AGE 16.7%
3. PHYSICAL DISABILITY 12.6%
4. RACE & COLOUR 10.3%
5. ANCESTRY & PLACE OF ORIGIN 4.6%
6. RELIGIOUS BELIEFS 2.3%
7. MARITAL STATUS 1.2%

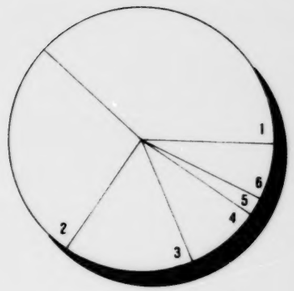


1984 - 1985

1. SEX 46.0%
2. RACE & COLOUR 28.4%
3. PHYSICAL CHARACTERISTICS 7.1%
4. ANCESTRY & PLACE OF ORIGIN 6.2%
5. RELIGIOUS BELIEFS 5.2%
6. AGE 4.7%
7. MARITAL STATUS 2.4%

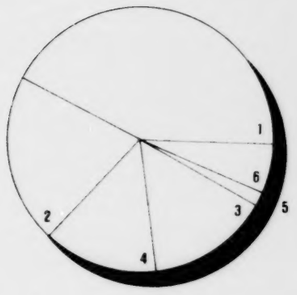


COMPLAINTS ON BASIS OF COLOUR / RACE



1985 - 1986

1. BLACK 38.6%
2. NATIVE 27.3%
3. SOUTH ASIAN 15.9%
4. ORIENTAL 9.1%
5. WHITE 2.3%
6. OTHERS 6.8%



1984 - 1985

1. BLACK 44.3%
2. NATIVE 19.1%
3. ORIENTAL 14.8%
4. SOUTH ASIAN 13.9%
5. WHITE 1.7%
6. OTHERS 6.1%

PERCENTAGE OF COMPLAINTS BY GROUNDS